

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 13, 2007

STATE OF TENNESSEE v. JAMES MICHAEL HANNERS

Appeal from the Criminal Court for Rutherford County

No. F-51946 Don R. Ash, Judge

No. M2006-01077-CCA-R3-CD - Filed May 15, 2007

A Rutherford County Jury convicted Appellant, James Michael Hanners, of assault on September 19, 2002. The judgment form included the notation that “Assault-Bodily Injury” was the offense for which Appellant was convicted. On March 1, 2006, Appellant filed a Motion to Correct Judgment requesting that the notation be changed to read “Assault.” The trial court denied the motion stating in its order that the jury was instructed on assault based upon T.C.A. §39-13-101(a)(1), intentionally, knowingly or recklessly caus[ing] bodily injury to another” Appellant appeals from the trial court’s denial of the motion. We dismiss Appellant’s appeal because there is no appeal as of right for denial of a motion to correct judgment under Rule 3 of the Tennessee Rules of Appellate Procedure, and we decline to grant a writ of certiorari because the trial court has not acted without legal authority.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Dismissed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID G. HAYES, and J. C. McLIN, JJ., joined.

B. F. “Jack” Lowery, Lebanon, Tennessee, for the appellant, James Michael Hanners.

Robert E. Cooper, Jr., Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; Bill Whitesell, District Attorney General; and Jude Santana, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

In January of 2002, the Rutherford County Grand Jury indicted Appellant with one count of child abuse. On September 19, 2002, a jury found Appellant guilty of the lesser-included offense of assault. The trial court sentenced Appellant to eleven months and twenty-nine days to be suspended after seven months. On the judgment form, the trial court wrote that Appellant's conviction was for "Assault-Bodily Injury." On March 1, 2006, Appellant filed a Motion to Correct Judgment according to Rule 36 of the Tennessee Rules of Criminal Procedure. The motion requested the trial court to change the judgment form so that it would read, "Simple Assault" instead of "Assault-Bodily Injury." On April 7, 2006, the trial court filed an order denying Appellant's motion. Appellant filed a notice of appeal.

ANALYSIS

Appellant argues that the jury found him guilty of "Assault" according to the verdict form, therefore, the trial court erred in noting the conviction as "Assault-Bodily Injury." The State argues that this appeal should be dismissed because Appellant does not have an appeal as of right from the trial court's order. In reply, Appellant urges this Court to review this issue by way of a common law writ of certiorari.

We agree with the State. Rule 3(b) of the Tennessee Rules of Appellate Procedure states:

In criminal actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea of not guilty; and (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(i) or (iv) of the Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there was no plea agreement concerning the sentence, or if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had. The defendant may also appeal as of right from an order denying or revoking probation, and from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding.

Tenn. R. App. P. 3(b). A trial court's denial of a defendant's Rule 36 motion to correct judgment is not included in Rule 3. *Ciondre T. Moore v. State*, No. E2005-02492-CCA-R3-CD, 2006 WL 2706143, at *2-3 (Tenn. Crim. App., at Knoxville, Sept. 18, 2006); *Terry Penny v. State*, No. E2004-

01735-CCA-R3-PC, 2005 WL 3262929, at *2 (Tenn. Crim. App., at Knoxville, Dec. 2, 2005), *perm. app. denied*, (Tenn. March 27, 2006); *State v. Cecil Moss*, No. M2005-00279-CCA-R3-CO, 2005WL 3100097, at *3 (Tenn. Crim. App., at Nashville, Nov. 18, 2005), *perm. app. denied*, (Tenn. March 27, 2006). Therefore, Appellant does not have an appeal as of right.

We now address Appellant's request to review this appeal under the common law writ of certiorari. T.C.A. § 27-8-101 is the codification of the common law writ, this section states:

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when in the judgment of the court, there is no other plain, speedy, or adequate remedy. This section does not apply to actions governed by the Tennessee Rules of Appellate Procedure.

T.C.A. § 27-8-101. "Generally, the writ of certiorari is limited in application and may not ordinarily be used 'to inquire into the correctness of a judgment issued by a court with jurisdiction.'" *Moody v. State*, 160 S.W.3d 512, 515 (Tenn. Crim. App. 2005)(quoting *State v. Adler*, 92 S.W.3d 397, 401 (Tenn. 2002). A writ of certiorari is proper when a trial court is "without legal authority" and there is no other "plain, speedy or adequate remedy." *Id.* (quoting *Adler*, 92 S.W.3d at 401).

We hold that a grant of a writ of certiorari to Appellant in the case *sub judice* would not be proper. The Judgment Document Form to be used by Tennessee trial courts is appended to Rule 17 of the Rules of the Supreme Court of Tennessee. The required contents of the judgment form are found in T.C.A. § 40-35-209(e) and Rule 32(e) of the Tennessee Rules of Criminal Procedure. T.C.A. § 40-35-209(e) states that the form should include, "[t]he type of offense for which the defendant was charged and convicted, and the sentence imposed" Rule 32(e)(2) states that the judgment must include, "(A) the plea; (B) the verdict or findings; and (C) the adjudication and sentence." The notation of Appellant's convicted offense as "Assault-Bodily Injury" meets the "type of offense" recommended notation for inclusion in the judgment, as well as, "the adjudication" requirement. Therefore, the trial court was acting within legal authority in denying Appellant's motion.

CONCLUSION

For the foregoing reasons, this appeal is dismissed.

JERRY L. SMITH, JUDGE